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High Court Mulls Greenhouse Gas Regulation

By H. JOSEF HEBERT , 06.26.2006, 04:27 PM

The Supreme Court plunged on Monday into the acrimonious debate over global warming and whether the government should regulate "greenhouse" gases, especially carbon dioxide from cars. The ruling could be one of the court's most important ever on the environment.

Spurred by states in a pollution battle with the Bush administration, the court said it would decide whether the Environmental Protection Agency is required under the federal clean air law to treat carbon dioxide from automobiles as a pollutant harmful to health.

The decision could determine how the nation addresses global warming.

President Bush has rejected calls by environmentalists and some lawmakers in Congress to regulate carbon dioxide, the leading heat-trapping "greenhouse" gas going into the atmosphere. Bush favors voluntary actions and development of new technologies to curtail such emissions.

But a dozen states argued that carbon dioxide and other heat-trapping chemicals from automobile tailpipes should be treated as unhealthy pollutants. They filed a lawsuit in an effort to force the EPA to curtail such emissions just as it does cancer-causing lead and chemicals that produce smog and acid rain.

The Supreme Court on Monday agreed to take the case after a divided lower court sided with the administration. Arguments will be late this year, with a ruling by next June.

"This is going to be the first major statement by the Supreme Court on climate change. ... This is the whole ball of wax," said David Bookbinder, an attorney for the Sierra Club, one of a number of environmental groups that joined the states in their appeal to the high court.

While the case doesn't specifically involve carbon releases from power plants, environmentalists said a court decision declaring carbon dioxide a harmful pollutant would make it hard for the agency to avoid action involving power plants which account for 40 percent of the carbon dioxide released into the air.

Cars and trucks account for about half that amount.

The EPA said in a statement that the agency "is confident in its decision" not to regulate the chemical under the federal Clean Air Act and plans to argue its case vigorously before the high court

Recently, Bush told reporters he views global warming as a serious problem and has "a plan to be able to deal with greenhouse gases" short of regulating their use. It includes developing new technologies for cleaner burning coal, using alternative motor fuels such as ethanol as substitutes for gasoline and expanding nuclear power to produce electricity.

Critics argue that carbon emissions have continued to increase - though the rate of increase has declined - and only regulation of carbon dioxide and other greenhouse gases will stem the amount going into the atmosphere.

"It is encouraging that the high court feels this case needs to be reviewed," said Sen. Jim Jeffords, I-Vt., who has campaigned in Congress to regulate carbon dioxide. "It is high time to stop relying on technicalities and finger pointing to avoid action on climate change."

The states involved, which together account for more than a third of the car market, say the Clean Air Act makes clear carbon dioxide is a pollutant that should be regulated if it poses a danger to public health and welfare. They argue it does so by causing a warming of the earth.

The administration maintains that unlike other chemicals that must be controlled to ensure healthy air, carbon dioxide from burning fossil fuels is not a dangerous pollutant under the federal law. And, officials argue, even if it is, the EPA has discretion over whether to regulate it, considering the economic costs involved.

The agency should not be required to "embark on the extraordinarily complex and scientifically uncertain task of addressing the global issue of greenhouse gas emissions" when voluntary ways to address climate change are available, the administration argued in its filing with the high court.

While a federal appeals court sided with the administration, its ruling was mixed.

One judge said the states and other plaintiffs had no standing because they had not proven harm. A second judge said even if the law gave the EPA authority to regulate carbon dioxide, the agency was not obligated to do so. A third judge, in the minority, said the EPA was violating the law by not regulating the chemical.

In their appeal, the states maintained the case "goes to the heart of the EPA's statutory responsibilities to deal with the most pressing environmental problem of our time" - the threat of global warming.

Plaintiffs in the lawsuit were California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington. They were joined by a number of cities including Baltimore, New York City and Washington D.C., the Pacific island of America Samoa, the Union of Concerned Scientists, Greenpeace, and Friends of the Earth.

The case is Massachusetts v. Environmental Protection Agency, 05-1120